

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES January 22, 2013

Present: Ch. Edward F. Grouke, Robert Read, Keith Rondeau, Gary Sagar (for Keith Rondeau petition 2012-24), Ronald Blum, Gary Sagar (for Ron Blum on petitions 2012-28, 2012-30), Roger Ross

7:00 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, January 22, 2013. I am going to go over our Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

2012-28 Eric Schultheiss, 16 Covell Avenue, Seekonk, MA 02771 Owner and Petitioner, Appealing the Decision of the Zoning Enforcement Officer, and requesting a **Variance** under Sections 6.3, 6.4, 6.5 and 6.8 to allow the construction of a full second floor to a single family dwelling on a lot with less than the required minimum lot area, lot width, depth of front yard and width of side yard setbacks at 16 Covell Avenue, Plat 34, Lot 81 in a R-1 Zone containing 6,025 sq ft.

Abigail Schultheiss and
Eric Schultheiss 16 Covell Avenue, Seekonk, MA., Sworn in.

E. Schultheiss I want to put a full second floor with 3 bedrooms to make it a 2 story full cape. We are going straight up. We need the extra room we are expecting a baby. We have done everything we had to with the town.

Ch. Grouke I will poll the audience. Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None. Is there anyone with any questions? None.

K Rondeau In this neighborhood, we have seen people here before mostly because of the size, shape, and topography of the lots in the neighborhood. When people want to raise a couple of kids they want to build up because with the small lots there is a hardship; they can only go up.

G. Sagar made a motion to close the public hearing and uphold the decision of the Building Inspector, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the petition as submitted, seconded by R. Read **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

2012-30 Victor DaSilva, 57 Jillian Way, Westport, MA 02790, Owner, by Jo Ann Bentley, Jo Ann Bentley Architect, Inc, 209 Bedford St. Suite 404, Fall River, MA 02720, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3, and **Variances** under Section 6 for the minimum lot area requirement, front yard setback and rear yard setback requirements, to allow a second floor addition to a pre-existing, legal, nonconforming dwelling at 30 Grove Street, Plat 9, Lot 237 in a R-3 Zone containing 23,250 square feet.

Jo Anne Bentley Jo Ann Bentley Architects, 209 Bedford Street Fall River, MA sworn in. I am the architect. I am here acting on behalf of the property owner. This is an existing single family ranch house and he wants to put a second floor on. This is an undersized lot, there are wetlands, it does not meet front and rear yard setbacks

and the footprint of the building will not increase. We are going straight up, there will be no footprint increase only an increase in height. It is a ranch now but when we are done it will be colonial with three bedrooms on the second floor.

G. Sagar How long has Mr. DaSilva owned this? I know it has been vacant for quite a while.

J. Bentley I believe he has owned it for about 6 months.

R Ross Will this be the applicant's primary residence after the work is complete?

J. Bentley Yes.

R. Read It might be an undersized lot but it is the largest lot in the neighborhood.

J. Bentley Yes, it has 23,250 sq ft.

Ch. Grouke Is there anyone to speak in favor of the petition? None. Is there anyone to speak in opposition to the petition?

Jason Schneider 35 Luther Street, Seekonk, MA. Sworn in. My house is directly in front of the house. Our concerns are that we were afraid it would be a rental property, we don't want more rental properties. We have concerns about the septic and the number of people living in the house.

Ch. Grouke The plan shows a proposed new septic but if it needs a new septic, that is determined by the Board of Health.

G. Sagar The septic is determined by the number of bedrooms and it is two people per bedroom and 55 gallons per day per person so 110 gallons per bedroom and with 3 bedrooms that will be 330 gallons for design flow. It shows an existing cesspool that will be abandoned so that will be an improvement as far as water quality perspective.

J. Schneider We have privacy concerns with their second story, they will be looking straight into our home and our back yard.

G. Sagar Just to eliminate your fears, you have roughly 80' from there to your property line.

J. Schneider I am on the other side of the culvert.

J. Bentley I could talk to them about putting up a fence.

Ch. Groucke Is there anyone else to speak against the petition? None. Is there anyone with any questions?

R Ross I have a concern that the owner on the tax record is listed as Fannie-Mae c/o Victor DaSilva. Do you know if he purchased the property from Fannie-Mae? Is this foreclosure property? He may have purchased it from Fannie-Mae recently since the tax roll is in January.

G. Sagar That may be the case because I can recall going there from the Assessor's Department and this property has been vacant for at least a couple of years.

Ch. Groucke Do you have any response to Mr. Schneider's privacy issue concerns?

J. Bentley We are not increasing the foot print so we are not getting any closer; we are only going higher. I could speak with the owner about possibly a fence, but I don't want to speak for owner and offer that. It is a long 250' frontage. That is a long fence line but if that is something to erase fears I could recommend it to the owner; but we are not going any closer to the property line.

Ch. Groucke Not that myself or any other members would impose that on you and you do make the point that you aren't going any closer.

G Sagar I would like to suggest that maybe Mr. DaSilva could reach out to the abutter and see what they could both come up with.

K Rondeau We have done two similar projects over the last few years in that neighborhood for the same reason. They only have room to go straight up. Even if they go sideways, they still need variance, the septic is to the left and there are wetlands in the back.

G. Sagar made a motion to close the public hearing and uphold the decision of the Building Inspector, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

G. Sagar made a motion to grant the relief as requested, seconded by R. Ross **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

The Board entered into brief recess.

2012-29 Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, Owner, by Francis Cavaco, Chairman, Board of Selectmen, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6.2, and a **Variance** under Section 6.5 to allow a 24' x 56' office trailer as a temporary office location for Seekonk Human Services within the front yard setback at 532 Arcade Avenue, Plat 18, Lot 57 in a R-2 Zone containing 42,875 acres.

Gary Sagar Sworn in. I am a member of the Board of Selectmen; and I am an alternate member of the Zoning Board of Appeals. Before I appeared on behalf of the Town, I first requested an opinion from Town Counsel if it would be permissible, in essence because I represent the Town of Seekonk, not Seekonk Columbus Corporation, if I am allowed to represent the town in the capacity of a member of the BOS. Town counsel suggested I file with this Board and the Town Clerk a discloser of conflict of interest that is required under General Laws, Section 68A. I have two copies of this, one for the Board and one for the Town Clerk. I would like to request the Board's clerk to file this with the Town Clerk tomorrow on my behalf if that is permissible with you.

Ch. Groucke Certainly.

G. Sagar The reason for the petition this evening is because the Town of Seekonk is currently in the planning process of designing a new senior center which this Board has previously permitted in 2011 for the human service center to be constructed here on the Town Hall campus. The building committee has worked diligently but has encountered setbacks that are beyond their control. They are moving as quickly as possible but there are some anticipated future delays that could possibly further delay that building for at least a year. So we as the Board of Selectmen with the assistance of the Town Administrator decided that it is in the best interest of the Town and the seniors, to remove them from the second floor of the Pleasant Street School and put them in a one story building. So in looking for available real estate that we could rent, the Building Commissioner came up with the idea to use portable modular offices and put them here. I suggested we look for a place that they could congregate and have a function hall for the seniors. I believe you have a copy of this, but this is an aerial view of the Knights of Columbus property. This is the suggested 24'x56' modular offices. This is an R2 residential zone which requires a Special Permit for civic and municipal use. We are also within the front yard setback so we require a Variance. The structure we are looking to rent, this is an example of a similar structure that is currently in use at the Bristol Plaza in South Attleboro where the Home Depot is. They are tearing down a portion of the structure, so they placed this in the center of the parking lot; these are the same modular units. You will notice they come with full handicapped accessibility with these ramps. Every

municipal use in the Town of Seekonk including the land fill, the fire station, is within a residential district requiring a Special Permit by this Board. We are asking for a Special Permit for the municipal use and a Variance so the temporary building can be located as it is depicted in the aerial plans. The reason we want to place it there is twofold. It is for the convenience and safety of our seniors and also there are not handicapped accessible bathrooms within the Knights of Columbus so this unit comes with handicapped accessible restrooms. It only makes sense to place this as close to the existing building as we can to also utilize all the parking on the site. We are in the process of entering into a contract to rent this on a monthly basis. It will afford the Human Services Department a one story building with private offices and handicapped accessibility. The function hall at the Knights of Columbus will be available for the senior center when the seniors have activities. What also compliments this site is the fact that it is adjacent to the YMCA. It makes a nice campus geographically in the center of Town. As we talk about a Variance, there has to be a hardship. The hardship that I see is the fact of having handicapped accessibility for the seniors. Under Section 3, Chapter 40A, handicapped access is exempt from the requirements of zoning however the building has to have ramps and we are here to request a Variance. Once the new senior center is constructed and occupied, this will be removed so this is only a temporary location. While the plans show a 17' setback, I would like to request a 15' frontage so we have some latitude when placing the building. On behalf of the Town, I would like to thank the Knights of Columbus for being such a willing partner and helping us on a temporary basis. Our time line is, as soon as we can get the approvals from this Board, we have a request on the February Town Meeting for a warrant article to get some funding to carry us through until the 30th, and then it will be part of the budget.

R Blum Why such a push? Is it just the delay in construction?

G. Sagar Pleasant Street School is old, it is out of code, there are 11 stairs to get to the office area. It is long overdue to get them out of there. We believe it is in the best interest of everybody.

R Blum Is this self contained or is it plumbed into the septic; the power? How does that all work?

G. Sagar The bathrooms can be tied into an existing septic if you want, which we did not want to do or it has a self contained, tight tank that you pump out as needed; probably every couple of weeks. The electric, telephone or cable, will all be dropped from existing lines on Arcade Avenue. It will be heated by propane I believe and we will be tapping into the water line at the Knights.

R. Blum How long will this be there? What is the time frame?

G. Sagar We all wish we did not have to do this at all but the time frame is minimum of one year. That is a minimum; I don't want to be backed into a corner and have to be out of there in a year; there are a lot of issues. Everybody is of the opinion that this is a temporary thing and as soon as we can be out of there we will.

R. Blum Will this be big enough?

G. Sagar Yes. Right now the office area at Human Services Department encompasses about 750 sq ft, that office area is about 1300.

R. Blum How much will this cost?

G. Sagar Between the operating expenses and the rental, about \$2,000 per month but one of the problems is the seniors occupy Pleasant Street school and all the bills are paid by the Collaborative. (inaudible)

Roger Ross Are you formally asking that the Board approve an amendment to your application to reflect a 15' setback rather than the 17'? The application doesn't state it but it is incorporated in your plan. I think it is part of the application so if you are looking for an amendment, I think a motion would be in order so it would reflect what you are actually seeking.

R. Ross made a motion that the applicant would be given leave to amend his application to seek a 15' setback from the front property line rather than the 17' as depicted on the plans submitted; seconded by R. Blum **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Ronald Blum, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

R. Ross How many employees will be in the modular?

G. Sagar I believe the staff is 6. The Knights basically do not use the building during the day. We will be renting it from 8-4 Monday through Friday. We have complete use of the site and then week nights after 4PM and weekends they use it.

Robert Read Why does it have to be 15'?

G. Sagar We are trying to keep it as close to the building as possible for access and convenience of the seniors to go inside the function hall.

Keith Rondeau Why put the trailer here instead of Pleasant Street?

G. Sagar Pleasant Street School has its limitations where the access is the main issue; and we can put 100 people in Knights of Columbus but at Pleasant Street they are restricted to under 50. It is just a better layout.

R. Read The layout of Pleasant Street School is terrible.

Ch. Grouke Should we put a time limit on this? Maybe two years so if something goes array with the building of the Senior Center, if it is not permanent it would help in the other process.

G Sagar This is temporary, I do not want to see it turn permanent. We want to get out of there as soon as possible but need at least a year.

K Rondeau Maybe this will hold people accountable to get the project built within two years and it safeguards this project from being permanent situation. I think there is wisdom in that.

Ron Blum Is this all set? If it gets approved tonight does it have to go to Town Meeting for funds or anything?

G. Sagar We have a warrant article in February. The time line we are looking at is we are looking to get a decision this evening, have it reduced to writing, by the time the appeal period ends, then Town Meeting, the setup; we are looking at occupying April 1 if we get the funding.

R Blum Where do we stand on the senior center?

G. Sagar The Senior Center Building Committee came before the ZBA March 2011, they received the Special Permit in May, 2011. I believe they had a meeting last week and have just decided on construction and hiring an architect.

R. Blum I feel bad, that is a lot of cash over two years without having a building.

G. Sagar The Finance Director and I did extensive search of a lot of buildings and every one we encountered had parking problems, handicapped accessibility problems or both. I would prefer no timeline but if you did, two years.

R Ross If we decide to have timeline, it would have the possibility for an extension so they do not have to go through the process again. Maybe two years with 60 day notice to the Board if they need to come back.

G. Sagar The Knights of Columbus is renting the land and the use of the facility. We pay utilities, the use of the land, the use of the function hall.

Ch. Groucke Is there anyone to speak in favor of the petition? No response. Is there anyone to speak in opposition to the petition? No response. Is there anyone with any questions? No response.

K. Rondeau made a motion to uphold the decision of the Building Inspector, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

R. Read made a motion to uphold the decision of the Building Inspector, Seconded by R. Blum; **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

R. Blum made a motion to approve the Variance as amended with a 15' setback for a two year time limit beginning April 1, 2013 with the stipulation that if an extension is necessary, the BOS shall notify the ZBA in writing within 60 days of the expiration date or prior to February 1, 2015; seconded by R. Ross **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

R. Blum made a motion to approve the Special Permit as submitted, seconded by R. Ross **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

2012-24 Ronald J. DiPietro, 400 Taunton Avenue, Seekonk, MA, Owner by Albert Whiting, Ready Imaging Inc., Manchester CT, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 12.4 of the Zoning Bylaws to allow the applicant to install (1) CITGO "trimark" sign and (1) set CITGO letters, and apply new decals to the canopy fascia, at 400 Taunton Avenue, Plat 19, Lot 487 in a Local Business Zone containing 25,649 sq ft. (Continued from December 3, 2012)

Roger Ross Town Meeting adopted the Mullin Rule which states that a member who has missed one meeting can still vote. The statute is vague, I missed the last meeting, however I was not a member of the Board. I read the minutes, viewed the video, and listened to the testimony. I have a full sense of the last meeting and feel I am authorized to hear additional evidence. Unless I hear strong objection I feel I can hear it, I am handing Madame Clerk a signed certification for the record.

Al Whiting Ready Imaging 68 Loomis Street Manchester, Ct. sworn in. The site is at 400 Taunton Avenue. Mr. DiPietro is requesting that he be allowed to upgrade the CITGO image to the newest and current image that involves work on his canopy. He has a gas station canopy approximately 24 x 36 over the island right now and it has the old style CITGO 4 color stripe. The new CITGO image calls for red and white decals and two sets of CITGO signs; one is the CITGO triangle, also known as the "trimark"; the other is a set of CITGO letters. The petition shows before and after photos, the existing conditions and what the canopy would look like.

Roger Ross Based on last hearing, we certainly could not demand, but I think it is fair to say that we urged Mr. DiPietro to appear this evening. If he is not here, I would like to know why.

A Whiting I talked with Mr. DiPietro shortly after the December 3rd meeting. We went over what transpired here. I have not spoken to Mr. DiPietro since so I don't know why he is not here.

Ch Groucke This board heard from Mr. MacManus on behalf of abutters. As a result of that we made a request of the building inspector to investigate or respond to the complaints as they were stated by Mr. MacManus. We have since received a response from the Building Inspector dated January 16, 2013 (Ch Groucke read Mary McNeil's letter into the record) "*The current zoning bylaws and case law remind the Board that they cannot consider any other topics other than the requested variance and/or special permit petition before the Board. The concerns raised do not relate to the request for a sign variance.*" I also know that Mr. MacManus sent a letter to Ms. McNeil requesting additional information as well. I would like to call upon Mr. MacManus at this time.

Atty. MacManus Sworn in. There is no showing of a hardship of any kind. To reiterate, they are supposed to prove three things to get a hardship. It has to be related to the size, shape, and topography of the land; something unique to that piece of property in that zone. There is nothing unique about the property or structure in the zone. They are supposed to show hardship other than they just want a sign; something like a contractual hardship. Third is it does not derogate from the intent and purpose of bylaw. It should be done as Special Permit not a Variance;

the applicant has not shown grounds for a variance. The Building Inspector's letter sounds like the Board should not listen to what we talked about last time regarding the concerns of the neighbors. She says the bylaw stops you from discussing other bylaw areas. The bylaw does not limit the board in any way and Ch 40a does not limit the board in any way on what you base the decision on. The decision can be made on anything that is relevant. The concerns the neighbors brought up at the hearing last time can be part of this. Our argument is; why should the Town be giving a Variance to a piece of property that is giving serious problems in the neighborhood? That is certainly within the purview of the Board. The Building Inspector's letter can be interpreted in a way that sounds like you cannot listen to the complaints, that is not correct, the board can deny a variance for any reason even if they can prove those three parts of a hardship. A Variance is not a right; it is a privilege granted by this Board to override the bylaw. They have not met any of the requirements for a variance and even if they did, this Board can still, based on the testimony provided, deny this petition. If the Board is inclined to give the Variance under MGL 40A and under the bylaws of the Town, section 20.2 you can put conditions, safeguards, limitations, as to time and use. Therefore, if the Board is inclined to give a Variance in this case, we are asking as condition of that Variance, this Board bar the land owner from allowing the storage of septage and portable toilets on the property; and that the property owner be barred from allowing the transfer of septage on property.

Ch Groucke From my own standpoint, I am not speaking for other members of the Board, I look at it differently. I think what we tried to do is respond to the concerns of the neighbors by requesting the Zoning Enforcement Officer to look into what was brought to our attention as complaints by the neighbors. That is what our intent was. We cannot force the Building Inspector to take action; I think it was a request. I do not think we have authority to ask her to act any further in regards to those issues in this petition. That is just the way I feel about it. I wanted to ask you if you had received any additional response to your letter of January 10th.

Atty. MacManus I did not, I received the same notice you did.

Ch. Groucke My feeling is still that in order to get those issues in front of the Board, a procedure has to be followed in which a party would request an opinion from the Building Inspector or make a complaint and then based on whatever the response was, if it was negative or if they weren't satisfied, they would then have the right to file an appeal to this Board. I was looking at section 14.2 of the bylaws in that regard, under 14.2.1 it says "*The Board shall hear and decide appeals from any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provision of the By-Law or Chapter 40A*". It goes on to say under Section 14.3 "*it shall be taken within 30 days*". It seems to me that if a formal complaint is filed, and there is no action taken within the time limit then an appeal can be taken to this Board. Then the

owner is notified and then we have a public hearing on the substance of that complaint as opposed to as having it part of a hearing on a sign variance. It seems to me that the owner is not getting due process if we are going to make a decision for a sign Variance based on complaints from abutters.

Atty. MacManus What we are talking about, an appeal, is certainly an alternative. But this still brings us back to the question of do they have the right to a Variance?

Ch. Grouke That is a separate issue altogether.

R. Ross We are not an enforcement body. If your clients are taking the position that Mr. DiPietro by virtue of his activities of the septic and all the rest of it, is in violation of zoning, there is a mechanism for that and the mechanism is 14.2.1., that the Chairman just read. We don't have the authority to enforce zoning violations unless it gets to us in due course and according to statute and ordinance, it is not here. We can listen to what your clients have to say, clearly, but what is before us is a petition for a sign variance and there are certain elements that must be met and that is what we look at. The storage issue is a separate issue. It is very real to your clients; I am not trying to minimize it, but there is a mechanism for that. I heard Mr. Whiting. If I understood you correctly Mr. MacManus, you said that even if the applicant meets all the elements for a Variance, we still have the authority to deny that application. Wouldn't that be an abuse of discretion if in fact they met all the elements?

Atty. MacManus No it is not. There is case law in Massachusetts that states that a board can deny a variance with reason. First they have to meet those three things, but even then, the Board can deny them with reason. A variance is a privilege and there are requirements for a Variance and we have specific conditions that we would like to have put in that and the Board has the ability to do that there rather than going through the appeal process.

G. Sagar Mr. Chairman, if I understand you correctly, Mr. MacManus, on behalf of his clients, filed with the Building Inspector on January 10th, a complaint if you will asking for specific performance on that. If the Building Commissioner does not respond back to him within 30 days, does that trigger the next portion? Can they file an appeal for non action?

Ch. Grouke I think it is possible. A non response can be a negative response.

Atty. MacManus But that would require the neighbors to have an additional expense.

Ch. Grouke Then we are telling the owner in a formal way that this complaint has been made and no action has been taken and now we have an appeal on that issue. That is the major difference rather than a hearing on a sign issue.

G Sagar In 2004, we issued Special Permits on major projects going in there and then they decided not to go forward, so those Special Permits are basically null and void. If we were to grant a Variance with all the stipulations to address all their concerns in the back and the owner of the property decided he was not going to go forward with it, then there is no enforcement action. From a standing perspective it would be better off to appeal because then the issue will be addressed.

K Rondeau Sworn in. 17 Shady Lane. Mr. Chairman, you cited section 14 as reason to not go forward for procedural issues. I would like to remind the Board that the Building Inspector herself has not followed procedure in regards to this case and this piece of property. On July 6, 2006, then Building Inspector Mike Crisafulli issued a cease and desist order for the use of the septic business Town Sanitation, that was basically ignored by the owners. Shortly thereafter, I don't have this piece of paper, the new Building Inspector Mary McNeil, she issued the same cease and desist order. Because that was ignored, she followed that up with a Building Determination letter regarding Town Sanitation usage and she says in that letter that dated July 27, 2009, "*The running of this business on property owned by you is a violation of the Town of Seekonk Zoning Bylaws Section 7.1.*" Then she gives the paragraph of what to do if you want to appeal it. She says, within 30 days. She follows that letter with another letter dated November 3, 2009, stating that "*your attorney has requested an additional 45 days*". Now this is above and beyond the 30 days they already have by the bylaw, she extended it an additional 45 days without anybody's knowledge. Then Mr. Navega sent a letter to her on November 13, 2009, which he says he disagrees basically. She issues another letter, based on his letter and it was not until June 7, 2011 and it was a response to a note sent by one of the neighbors on May 17, 2011 asking what was going on, we know you gave cease and desist orders, we know you gave a zoning determination and yet they continue for several years and she basically issues another letter, December 2011, almost two years later, saying it is okay for DiPietro to have all that going on in the back of the property. If we are to follow process and procedure and follow the bylaws, then what is good for the goose is good for the gander. This is a swamp that has been made back there of issues and problems, because people try to do the right and have been ignored and people have done the wrong thing and it has never been made public. I think if we are going to hold the neighbors to the standards of section 14, then we need to go back in time to July 27, 2009 and start the clock ticking from there and Mr. DiPietro has 30 days to appeal this decision and that never happened. These are all in the file and all accessible. My problem is why are we being held to a different standard? Our lives are impacted every single day by what is going on over there. It is affecting the quality of our life. It is time that somebody did the right thing about it, you have the power. There are numerous times this Board listens to complaints of abutters on different issues and issued stipulations on that. When somebody wants to build an addition to their house and you make them put

up screening or the expense of a culvert system so there is no potential possible issue of water runoff. We have gone through great lengths to hear on almost all petitions before this board to hear the concerns and acted upon those concerns even when it did not go to the letter of the law of the petition presented. It has happened on many, many occasions. Why are we going to stand on that nebulous wording by the Building Inspector now? It is unfathomable to me. I don't understand. I don't understand how anybody on the Board can take that position. You have the power; you have the right. It is in Section Ch 10 in Mass Laws 40a, it is the third paragraph down. It is a paragraph that stands alone and it says you have the power to act on anything on the use, the timeliness of anything regarding the property presented to you for a Special Permit or Variance. It is there in black and white. I hope this board takes this seriously.

G Sagar If this Board was to grant a variance and put stipulations favorable to your position, issued to the owner it would be valid for a year. He has a year to decide if he wants to go forward or not.

K. Rondeau It will be another year of hell.

G. Sagar You are correct. So, if we were to grant the variances and put all the stipulations favorable to the neighbors, he has one year to record that and if he doesn't within a year, the Variance is null and void. Then you are nowhere ahead of where you are now.

R. Read Which is exactly what happened with the previous petition.

G. Sagar Then you are exactly where you are now. I think you would be better off to keep it a separate issue and based on the letter that your attorney filed with the building Inspector, wait 30 days and if there is no response, file an appeal and I think you would be on much more solid ground. We have two attorneys sitting here...

R Ross I am not on grounds to advise anyone, but I agree with Ted's interpretation of Section 14.3.1 and I think that is the vehicle assuming they choose to do that. I think the issues that have been raised are a legitimate concern, and I empathize. That is not what is in front of us tonight. I know Mr. MacManus disagrees with that but that is my opinion.

G. Sagar To further that, the 2004 Special Permits were for a major renovation and construction and they opted not to go forward with it so those permits are null and void. If this Board wants to support their position, they would be better off to appeal.

K Rondeau Do you understand that puts the neighbors of having to go through a considerable expense that the owner did not have to do himself back in 2009 when he was

directed to do so? Maybe this Board will be willing to excuse the filing fees. I have a major issue with what happened in 2006-2011; this has been going on and on. We have done the legal thing and nobody wants to follow the legal way and we are being forced to do so and I find that highly unfair and highly unlawful.

Ch Groucke It seems if there was an enforcement action from 2009 by the Building Inspector and the Building Inspector is enforcing what is deemed to be a violation and it is not being followed then there is enforcement action via Superior Court too. The town has done that. That is a BOS call at that point. It seems to me some of the things you quoted were cease and desist type-things and that process is Superior Court, mandatory injunction. But it seems there are conflicting comments from the Zoning Enforcement Officer.

K. Rondeau Her only conflict was receiving a subsequent letter after the fact, after the appeal time passed, accepting the letter from their attorney and accepting his point of view and never reducing it to writing until two years later. I don't understand.

G Sagar If we deny the Variance, we could not put stipulations on a denial. For us to have any teeth, we would have to approve, and which again, he could let it expire and it puts you right where you were.

Ch. Groucke It puts it in the control of the owner. He could decide he doesn't need this sign and he has a year to do it.

Ch. Groucke Is there anyone to speak in favor of the petition?

Norman Manchester Marketing Representative from Mutual Oil 211 Wheeler Street, Rehoboth Ma. Sworn in. Ronny is my customer I provide his fuel. He wants to conform to the new standards of the CITGO stations nationwide. There are several locations in Seekonk where gas stations have signs on their canopy; BJ's, Stop and Shop, I could go on and on. I have been in the business for over 20 years, signage is everything. He is across the street from a BP location that has an illuminated green band that goes around the canopy that lights up at night with three sunburst logos, he is at a disadvantage; he needs signage.

Ch. Groucke Is there anyone else to speak in favor of the petition? No response. We have heard some opposition from those who wished to speak. Mr. MacManus?

Mr. MacManus The appeal process and the Variance are not mutually exclusive, the Board could grant the Variance with the conditions we are asking and possibly 6 months from now we could move forward with appeal in future if necessary.

Rick Machowski Shady Lane. Sworn in. I have been before probably 4 Boards before. (inaudible) It seems like there are ulterior motives on somebody's part. The cease

and desist order issue; one went away because a change in administration and then based on letter from attorney of the petitioner she retracts. There is no standard. A letter from his attorney gets her to change her position. A letter from our attorney means nothing. This board and her continue to send us down a legal road, superior court, they all come with price a tag. It has been an ongoing process of 8-10 years, mentally and financially exhausting. I think there is something behind this. I have no proof of what I am trying to say. It seems Mr. DiPietro can do nothing wrong in this town. It has been illegal in this town since the day his father turned the business over to him. It was a gas station. Then a gas station-truck stop. Then a gas station-truck stop-asphalt plant. Then a gas station-truck stop-asphalt plant-tree trimmer. Now it is a sewer plant. You guys keep pointing us down the legal road. I want somebody to go down there and stop what is going on, it doesn't have to take court action and all this fancy stuff. I will tell you a personal story I am not very proud of. I built a garage 15-16 years ago. It got out of hand, turned into more than I wanted it to be, this is in the woods; you can't see it other than a helicopter. 15 years later, I got a notice of violation for putting up that garage. Where that complaint came from, I have a good idea. It was right after I complained about his actions and what was going on over there. I know I am getting away from the subject matter but it is all included. I was issued all the directives from the Town of Seekonk to correct that at my expense. \$4,000 later it is now a nonconforming, legal building. I did wrong and paid the price. There was no formal complaint. Nobody knows where that complaint came from but the Town of Seekonk came down and took action on my violation. Now to try and get it to go the other way, we run into this. In conclusion, I find it very disturbing that that lady who comes highly praised as a Building Inspector, she could not find the time to come here tonight and explain some of the reasons she has done some of the things she has done. She has looked me right in the eye and gone like this... "No comment". I am asking her a legal question and her opinion (inaudible - change of tape)

Ch Grouke The neighbors, you are close to getting this issue in front of this board. You have the attorney; the attorney sent a letter so you are so much closer than ever before. It is a matter of continuing a process you are well into. There is not much more that needs to be done to get a hearing in front of this board. Don't give it up.

R. Machowski I'll be dead before this is resolved.

Ch. Grouke I hope not. We can't tell the Building Inspector what to do either. The Building Inspector answers to the BOS.

R. Machowski In all fairness to that, I went to the Board of Selectmen and got nowhere. It seems like nobody has authority over Mrs. McNeil.

- K Rondeau If you cannot compel the Building Inspector to write a determination on that property, what chance do we have since she has violated that procedure in the past?
- Ch. Groucke You could interpret these bylaws to say that Mr. MacManus' request has been made and if there is no response then that is a response, it is a negative response. It is an appealable response, appealable to this Board. That is a reasonable argument. You might not need much more.
- R. Read I don't understand if somebody makes a complaint to the Building Inspector why she will not go out and investigate it and tell us if the complaint is correct or not; even our request.
- Ch Groucke She chose not to do that and this is her response. I don't think we can compel her.
- R. Read The case of Mr. Machowski's garage, somebody discovered that and complained about that and it was followed up on. What is the difference?
- Ch. Groucke We are the Appeals Board.
- R. Ross Could we file a formal request from the BOS requesting that she be directed to...
- Ch. Groucke I suppose that is a possibility.
- Joann Rondeau Who is this woman's boss? It seems she is not responsible to anyone.
- Ch. Groucke I tried to look into that. It says in our bylaws, Section 15.1 it says this bylaw shall be enforced by the BOS through the Inspector of Buildings. That is what it says about enforcement. I still think the simplest and best procedure is to appeal her decision to this Board. Whatever that decision is whether it is a non decision, a non response or a decision that says there is no violation then that could be appealed. I think if we ask the BOS to do something, what if they say no? Then where are we at?
- R. Read How would they appeal to this Board?
- Ch. Groucke If you take Mr. MacManus' letter as a request and you count the number of days either in the statute or the bylaw and there is no response, then that in and of itself can be appealed.
- R. Ross It couldn't be any clearer, Mr. MacManus says "*we are asking that the Zoning Bylaws be enforced*", that is an enforcement request and that is clear.
- G. Sagar I think it puts the abutters in the strongest position.

Ch. Grouke Back to that wording it says, "*Hear and decide appeals from any person aggrieved by reason of his inability to obtain ...enforcement action from any administrative officer under the provisions of this By-Law or Chapter 40A of the General Laws.*" That "*inability to obtain*" is saying if there is no response, it is pretty clear; it is the inability to obtain what you are looking for.

Atty. MacManus (Inaudible) I believe there is a \$35 fee.

G Sagar That is for a Zoning Determination. This is a complaint, so you would be appealing non action of a complaint. That is my understanding.

Atty. MacManus Can the Board send correspondence to the Building Inspector advising your position? Does this Board consider that letter to be something that is appealable?

Ch. Grouke If you are here in front of us on that issue, there is a lot of momentum to hear that issue.

R Blum I believe we have had a couple of other applications before us for updated signage; we have history with applications where corporations have updated logos and signage that we have approved.

Ch. Grouke Although there are technical requirements regarding the granting of a variance, this Board has approved signage on many cases. Many times based on information such as what has been presented here and the testimony by Mr. Manchester.

R Ross This is only my view, and I was not here in those matters that Ron just referred to for signage. I assume without knowing that there was evidence before the board upon which that determination for those folks were made. The standards for a variance are relatively high under Mass General Law and our ordinance. Mr. DiPietro was not here, that is his right. Mr. Whiting appeared in his place, I have not heard anything that begins to rise to the level of probative evidence to meet the three prongs that grant a variance. If I stretch a point perhaps Mr. Manchester that denial would put Mr. DiPietro in a noncompetitive situation with the gas station either across the street or next door to him perhaps rises to the level of a financial hardship. If I stretch the definition, I could conceive that but that is it and that is just not enough. Whatever the motions are and whatever is in front of this Board, I cannot vote to approve the request for a Variance as submitted.

- G Sagar If fairness is an issue, BP has logos on three sides, I think the financial issue satisfies a hardship. We have done it in the past.
- Ch Groucke I would be inclined to grant a Variance based on past actions and neighboring stations having more signage; that being the basis for a hardship.
- R Read I would say that under ordinary circumstances I would approve but would it do any good to postpone this? When does the 30 days being?
- Ch. Groucke Well the letter is written January 10. But that has nothing to do with the sign petition. That is the way I look at it.
- R. Read What you are saying is this request for signs is irrelevant to what the issue is.

G Sagar made a motion to uphold the decision of the Building Inspector and close the public hearing, seconded by R Ross **and so voted unanimously by:** Ch. Edward F. Groucke, Ron Blum, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the Variance as requested, seconded by R. Read **and so voted by:** Ch. Edward F. Groucke, Ronald Blum, Gary Sagar, and Robert Read

Opposed: Roger Ross

VOTE: (Approve 4-1)

Work Session:

The Board determined that the next meeting will be March 11, 2013

Approval of minutes 12/03/12

R. Blum made a motion to approve the minutes from October 15, 2012, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Ron Blum, and Robert Read.

Roger Ross abstained as he was not present at that meeting.

VOTE: (Approve 4-0) 1 Abstained

Adjournment:

G. Sagar made a motion to adjourn the meeting, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Ron Blum, Gary Sagar, Robert Read, and Roger Ross

VOTE: (Approve 5-0)

Meeting adjourned at 9:05 PM

Respectfully submitted by:

Christina Testa, Secretary